IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3101 OF 2004

Ashok Chandrashekar Rao
Residing at 5/131,
Mangesh Mahalaxmi Building
Lhareghat Road, Hindu Colony
Dadar, Mumbai 400 014 ..Petitioner

Vs.

1.University of Mumbai
Through the Registrar
University of Mumbai
Mumbai-400 032.

2.University Institute of Chemical
Technology
Through its Director
University of Mumbai
Matunga, Mumbai 400 019.

3.University Grants Commission
Bahadur Shah Zafar Marg
New Delhi 110 002.

4.State of Maharashtra
Through its Official
Associate, High Court,Mumbai

5.Union of India
Aykar Bhawan, Marine Lines
Mumbai 400 0020 ..Respondents

Mr.C.U.Singh with Ms. M.D'Souza i/b.
M/s.Sanjay Udeshi & Co. for Petitioner
Mr. Rui A Rodrigues with Mr. B.v. Phadnis for
Respondent No.1 & 2
Mr.M.D.Naik, A.G.P. for Respondent No.4
Mr. Kiran J. Khanpile for Respondent No.5

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 26TH APRIL, 2005.

JUDGMENT (PER F.I. REBELLO,J.)

. Rule. Heard forthwith.

2. The Petitioner is presently holding the post of Reader in Mechanical Engineering. It was earlier known as the University Institute of Chemical Technology (UDCT) University of Mumbai. It is now the University Institute of Chemical Techonology. When the Petitioner was appointed UDCT was the Department of Respondent No.1. It is the case of the Petitioner that the post of Reader in Mechanical Engineering with Respondent No.2 is an isolated post being the only post of its kind. The Respondents have been unlawfully treating the said post as a reserved post. It is further set out that the post of Reader is incapable of being reserved as it is a post superior to the last post to the post of which reservation can be made, namely that of Lecturer.

3. It is not necessary to refer various other pleadings except to the extent they are required. When the Petitioner was first appointed it was pursuant to the advertisement dated 30th August, 1990 which appeared in the Times of India. The post was shown as reserved post in terms of the advertisement issued by Respondent No.1. As reserved candidate was not available the Petitioner came to be appointed. The post was re-advertised once again on 19th July, 1991, 16th July, 1993, 21st May, 1994, 10th August, 1999 and 6th February, 1997. In the advertisement which appeared in the Indian

Express of 14th August, 1995 it was pointed out that the post of reader in Mechanical Engineering was not being re-advertised as it had already been advertised six times. The Petitioner continues to hold the post.

4. The Petitioner has annexed letter dated 24th March, 1998 of the University Grants Commission. That letter shows that the policy of reservation in University and Colleges was applicable for direct recruitment up to the posts of Lecturers only. It is also set out that UGC had received communication from the National Commission S.C./S.T. setting out that there is negligible representation of S.C./S.T. at the level of Readers and Professors and asked for review of the matter. The Commission considered the matter in detail and decided that reservation can only be up to the level of Lecturer for S.C/S.T. candidates. In other words what is sought to be pointed out based on the letter of U.G.C. is that posts of Reader and Professors are not subject to reservation.

5. The Respondent No.1 University in the case of candidate who has been duly selected against reserved post in the event a candidate belonging to reserved category is not available, after the post has been advertised five times and in sixth

advertisement, it is shown as interchangeable, recommends to Respondent No.4 to de-reserve the post. This is in terms of the policy of Respondent No.4. In the instant case also the University wrote to Respondent No.4 to de-reserve the post. The Respondent University received a communication dated 1st February, 2003 setting out that whilst issuing advertisement, the advertisement did not mention for which category of backward class candidate the post is reserved. The advertisement was as if it was for all backward class candidates and as such it is not clear which particular post was reserved for which category and as such the University has recommended the case without following the proper procedure. In view of that University was informed that the post could not be de-reserved. The Petitioner was thereafter informed by letter of 16th August, 2004 that the Respondent No.4 had rejected the proposal sent by the University and had directed to re-advertise the posts by following the procedure for inter-changeability.

6. On behalf of the University an affidavit has been filed by Shri V.S. Gokhale, deputy Registrar. It is pointed out that the post of Reader is not an isolated post as there are four posts and the reservation policy of the State Government is binding on the University. There is reservation in

all levels in teaching and non-teaching staff under direct recruitment quota. It is then set out that as there was no candidate available from the reserved category, the Petitioner was appointed on temporary post against reserved category. There was clear cut note in the advertisement itself. It is then set out that as far as G.R. of December, 1994 is concerned, inter-changability advertisement is to be at the time of the sixth advertisement and sincere efforts have to be made to fill up posts from reserved category. The Government on that count rejected the de-reservation of posts. Various directions issued to U.D.C.T. to advertise the posts and when they were advertised is set out. It is pointed out that interchangeability clause has not been reflected in the sixth advertisement. It is also pointed out that inspite of all efforts no candidate from the reserved category for the post of Reader in Mechanical Engineering was found. The proposal for de-reservation had been forwarded pursuant to an order made by this Court and that has been rejected. It is submitted that in view of Respondent No.4 policy reservation policy U.G.C. could not prohibit reservation policy for the post of Readers and Professors. Respondent State has not filed any reply.

7. As noted earlier the Petition raises several

issues. However, in view of the view to be taken, we do not propose to decide the following issues.

(a). As to whether the posts are isolated posts and as such there cannot be any de-reservation;

(b). Considering the circular issued by U.G.C. on 24th March, 1998 whether there can be any reservation for the posts of Reader and Professor whilst filling in the posts by direct recruitment

. We proceed to dispose of the Petition on the issue whether the necessary advertisement had issued, for Respondent No.4 to de-reserve the post in terms of its policy.

. The Petitioner was first appointed as Reader in Mechanical Engineering in the year 1991 pursuant to the advertisement which appeared on 30th August, 1990 in t**he Times of India**. The Petitioner for the last 14 years has been holding the said post pursuant to the policy decision of the University. The rejection for dereservation of post by the State Government is only on the ground that when the post was advertised, the advertisement did not clearly specify for which category of backward class

candidate the post was reserved and secondly that on the sixth occasion there was no clause reflecting inter-changeability. In the advertisement issued on 30th August, 1990 as also on 19th July, 1991, on 16th March, 1993, on 21st May, 1994 and 10th August, 1995 the posts were shown as reserved for S.C./S.T./D.T. and N.T.. It is therefore, clear that there was no specific indication that the posts were reserved for a specific category of reserved candidate. In the advertisement issued on 6th February, 1997 the post of Reader in Mechanical Engineering was shown as reserved for Scheduled Caste. In the advertisement of 14th August, 1999 it was mentioned that the post was already advertised five times for S.C./S.T. candidates. It is therefore, clear that it is not as if the posts were not advertised showing reservation. What was not indicated was the specific reserved category. The posts in the sixth advertisement ought to have been shown as available for other categories in other words, interchangeable of the reserved category was available. Instead the respondent No.1 had first issued advertisement as if the posts were availed for all reserved candidates from the first to fifth advertisement. Inspite of that no candidate from reserved category applied for the said post. The advertisement was not by an affiliated College of Respondent No.1 but by Respondent No.1 itself.

. It is true that the objection of reservations is to further the cause of those who are socially and economically underprivileged. That however is subject to the resolution issued by Respondent No.4 which contemplates de-reservation in the event candidates from reserved categories are not available.

8. The Petitioner has approached this Court consequent to the post being advertised on six occasions. The advertisement was purely in the hands of the Respondent No.1. The Petitioner had no say whatsoever in the matter. The question is whether the action of Respondent no.4 in rejecting the proposal of Respondent No.1 for de-reservation can be sustained. In our opinion in the event there has been substantial compliance, ordinarily Respondent no.4 ought to de-reserve the posts in terms of the resolution and as long as there are no malafides and that the attempt is not to protect candidates from the forward categories. In the instant case as noted by us earlier there has been substantial compliance. In the advertisement issued on 14th August, 1999 it was again declared that the post of Reader in Mechanical Engineering was not being advertised as it already been advertised on six occasions. Inspite of all the advertisements no

candidate from any reserve category applied for the same or challenged the procedure of filling the posts. The advertisements were issued by the University itself. All these indicate that there was no candidate available from the reserved category to fill in the said post. In our opinion therefore this was a fit case for Respondent No.4 to dereserve the post.

9. The only issue that remains is the policy decision of Respondent No.4. The policy decision of Respondent No.1 is that if a candidate is selected against a reserved post, such candidate need not apply a fresh when the posts are advertised on the next occasion. If on re-advertisement for the prescribed number of times no candidate is available, the matter is sent for de-reservation to Respondent No.4 and on such approval the candidate first selected is allowed to be regularised against the post. The stand of the State Government, Respondent No.4 is that after the sixth advertisement and on de-reservation the candidate first selected has no right to be regularised against the post but post has to be re-advertised once again and all eligible must then be allowed to apply for the said post including the Petitioner. This stand of the University came up for consideration before us in the case of Mrs.

Chandana M. Rege Vs. The Principal, Ramnarain Ruia College of Arts and Science, Mumbai and Others in Writ PetitionNo.2676 of 2004. We noted in that judgment on the point of that case that in respect of the same College in respect of another candidate the State Government had permitted relaxation in the case of similarly situated candidate. Considering that we held as under :-

> . " The fact that the Government has granted relaxation in the case of Mrs. Abhyankar means that the condition for advertisement is not mandatory and can be relaxed."

. It would therefore, be clear considering the facts and circumstances of the case that the candidate has been holding the post continuing from 1991 and inspite of various advertisements no candidate from the reserved category was available. The University circular would as a rule be enforceable unless it is contrary to any constitutioned principles of law. To our mind as the policy was in force on the day the posts were advertised, would mean that it was open to all candidates even from the open category to make an application, for if eligible candidate from the reserved category S.C./S.T. were not available,

they could be considered. Once this policy of University was known it is not possible for us to hold that post has to be re-advertised once again though a duly qualified candidate had been selected. In these circumstances in our opinion we see no reason as to why Respondent No.4 ought to have rejected the case for dereservation. We also see no reason on the facts and circumstances and applying the case of Mrs. Chandana M. Rege (supra) as to why that ratio should not applied to the facts of the present case. In the light of that the decision of the State Government rejecting the application for de-reservation is set aside. The posts should be treated as de-reserved and consequent thereto, the Petitioner is entitled to be regularised.

10. We therefore direct Respondent No.2 University to regularise the Petitioner in the post of Reader in Mechanical Engineer with retrospective effect from 16th July, 1991 and on that basis to consider him eligible for promotion. Rule made absolute accordingly. No order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)